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Filing date: **04/14/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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|---------------------------|--|
| Proceeding | 91165519 |
| Party | Defendant Anncas, Inc. |
| Correspondence Address | JESUS SANCHELIMA, ESQ. SANCHELIMA & ASSOCIATES, P.A. 235 S.W. LE JEUNE ROAD MIAMI, FL 33134-1762 UNITED STATES |
| Submission | Other Motions/Papers |
| Filer's Name | Jesus Sanchelima |
| Filer's e-mail | legalassist@sanchelima.com |
| Signature | /js/ |
| Date | 04/14/2008 |
| Attachments | Resp to Opp Stat Ev. Obj.pdf (4 pages)(231258 bytes) |

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cited by Opposer deals with the evidentiary issues presented in the case at hand.

Applicant has submitted the TESS records in question for two purposes. First, the records are offered as evidence of how the term "HAVANA" (and similar words) are used by those in similar industries as Applicant. "Third party registrations have their greatest value as evidence when they are offered to show the sense in which a word, prefix or other feature of a mark is used in ordinary parlance." J. David Sams, *TIPS FROM THE TTAB: Third Party Registrations in TTAB Proceedings*, 72 Trademark Rep. 297 (1982). See also *General Mills, Inc. v. Healthy Valley Foods*, 24 USPQ2d 1270, 1277 (TTAB 1992).

Secondly, the TESS records are offered for the purpose of attacking Opposer's fraud claim. The records go to Applicant's state of mind during the Application process. Because so many applicants/registrants have used the identification "Cigars made from Cuban seed tobacco" in their applications, and such identification has consistently been accepted by the examiners at the PTO, Applicant in this case cannot be accused of fraud, because it merely did what was standard practice among similarly-situated parties. Applicant had, and still has, an honest belief that it will use the mark on "Cigars made from Cuban seed tobacco."

While the use of the TESS records at issue may not be relevant on issues of likelihood of confusion or strength of a mark or use of the mark by its registrant, they are absolutely relevant on the two issues of

(1) how the terms in the records are commonly used and (2) whether Applicant's actions, vis-à-vis its application, constituted fraud. For these reasons, the TESS records should be accepted into evidence by the Board.

SANCHELIMA & ASSOCIATES, P.A.

Attorneys for Applicant

235 S.W. Le Jeune Road

Miami, FL 33134-1762

Telephone: (305) 447-1617

Telecopier: (305) 445-8484

jesus@sanchelima.com

By: /js/
Jesus Sanchelima, Esq.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that Applicant's *Response to Opposer's Statement of Evidentiary Objections* is being sent by electronic mail and deposited with the United States Postal Service with sufficient postage as First-class mail in an envelope addressed to:

David B. Goldstein and Michael Krinsky
Rabinowitz, Boudin, Standard, Krinsky &
Lieberman, P.C.
111 Broadway, 11th Floor
New York, New York 10006
dgoldstein@rbskl.com

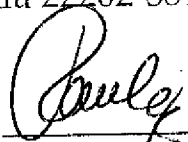
Counsel for Opposer

and by electronic filing to:

Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3514

On 4/14/08

Date



Signature

Pablo Perez

Typed or printed name of person
signing certificate